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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,372	12/21/2001	Jeffrey A. Trogolo	A-035 US	5146

7590

11/20/2006

AGION TECHNOLOGIES

60 Audubon Road
Wakefield, MA 01880

EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/032,372	TROGOLO ET AL.	
	Examiner	Art Unit	
	Frank I. Choi	1616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2,3,6,7,10-12,14-21,38,40,42,45,51-54,56,60,61,63,64,66-73,75-81 and 85.
Claim(s) withdrawn from consideration: 41,43,82 and 83.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 20061031
13. ☐ Other: _____


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Continuation of 11. does NOT place the application in condition for allowance because: of the reasons of record set forth in the prior Office Action (10/17/2006). Further, since the level of humidity is not given in JP 4-66512, it is still the position of the Examiner that the Applicant has not shown that the polyurethane polymer in the example in JP 4-66512 is not hydrophilic. Also, even if the example in JP 4-66512 was hydrophobic, JP 4-66512 does not preclude the use of hydrophilic polyurethanes. The purposes of making the zeolite more easily dispersible in hydrophobic resins by coating with the polyurethane does not preclude the use of hydrophilic polyurethanes. The Applicant provides no evidence that the polyurethane must be hydrophobic in order to be dispersible in the hydrophobic resin. The Applicant provides no evidence that the reduction in eluted silver ions is consistent with hydrophobic polyurethane. The Applicant provides no evidence that electrical resistance corresponds to hydrophilicity or hydrophobicity of the polyurethane. As such, contrary to the Applicant's arguments, the Applicant has not provided evidence that the polyurethane in the Example of JP 4-66512 is hydrophobic and, in any case, said example does not preclude the use of hydrophilic polyurethanes. The Examiner is not taking official notice as the prior art discloses a hydrophilicity test in which the polyurethane is placed in 100% humidity in a chamber for three days. Again the 0.1-5% weight of the polyurethane is simply a preferred amount and the weight of the polyurethane is not limited to said weight amount. Further, with respect to Takebayashi et al. one of ordinary skill in the art would be able to vary the thickness of the coating depending on the desired level of silver elution. The Applicant has provided no evidence that using 5% wt or more of the polyurethane polymer would result in no silver elution. Further, it is clear from the prior art that both thickness and composition of the polyurethane can be varied. It is clear from the prior art that there are two competing factors, duration of activity and level of activity. It is clear from the prior art that silver ions are soluble in water, as such, the higher the hydrophilicity the higher the elution of the silver. However, the higher the elution of the silver the less duration of activity. It is also clear from the prior art that the thickness of the polymer coating can effect elution. As such, one of ordinary skill in the art would be motivated to vary thickness and/or hydrophilicity in order to arrive at the desired level and duration of antimicrobial activity. The request to withdraw the finality of the prior office action is denied in that the amendments do not merely narrow the scope of the claimed invention. The Applicant in amending the claims made a clear distinction between coated or encapsulated microparticles and microcapsule, the latter being the encapsulation of a core containing silver zeolite and the former being the dispersion of silver zeolite particles in a polymer microparticle. Further, the claims were additionally amended to indicate the extent of the water absorption in terms of ion-exchange and release of metal ions, which was not previously indicated. See Remarks (5/12/2006), pp. 11, 12.

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